

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LIONEL SCOTT

Petitioner,

Civil No. 07-2387 L (PCL)

UNKNOWN.

Respondent.

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION PURSUANT
TO 28 U.S.C. § 2244(b)(3)(A)
GATEKEEPER PROVISION**

16 December 19, 2007, Petitioner, a state prisoner proceeding pro se, filed a Petition for Writ
17 of Habeas Corpus pursuant to 28 U.S.C. § 2254, raising a claim challenging his sentence in San
18 Diego Superior Court Case No. SDC137581.

19 The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has
20 submitted to this Court challenging his conviction in San Diego Superior Court case No.
21 SDC137581. Thus, this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as
22 indicated below.

PRIOR FEDERAL HABEAS PETITIONS DENIED ON THE MERITS

24 On February 22, 2001, Petitioner filed in this Court a Petition for Writ of Habeas Corpus
25 in case No. 01cv0305 W (JAH). In that petition, Petitioner challenged his conviction in San
26 Diego Superior Court case No. SDC137581. On January 18, 2002, this Court denied the
27 petition on the merits. (See Order filed Jan. 18, 2002 in Case No. 01cv0305 at doc. no. 13.)
28 Petitioner did not appeal that determination.

1 **INSTANT PETITION BARRED BY GATEKEEPER PROVISION**

2 Petitioner is now seeking to challenge the same conviction he challenged in his prior
3 federal habeas petition. Unless a petitioner shows he has obtained an order from the appropriate
4 court of appeals authorizing the district court to consider a successive petition, the petition may
5 not be filed in the district court. See 28 U.S.C. § 2244(b)(3)(A). Here, there is no indication the
6 Ninth Circuit Court of Appeals has granted Luken leave to file a successive petition.

7 **CONCLUSION**

8 Because there is no indication Petitioner has obtained permission from the Ninth Circuit
9 Court of Appeals to file a successive petition, this Court cannot consider his Petition.
10 Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition
11 in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. *For*
12 *Petitioner's convenience, the Clerk of Court shall attach a blank Ninth Circuit Application*
13 *for Leave to File Second or Successive Petition.*

14 **IT IS SO ORDERED.**

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16 DATED: January 4, 2008

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18 M. James Lorenz
United States District Court Judge

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